



**City of Glendale
Finance Department Policy
(Effective 4/28/2014)**

Materials Management Protest and Hearing Policy

ARTICLE 1 DEFINITIONS

“Aggrieved person or entity” means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

ARTICLE 2 PROTESTS

An aggrieved person or entity may protest any aspect of a solicitation. For purposes of this section, “any aspect of a solicitation” means an alleged violation of Glendale’s Purchasing Code as it relates to the solicitation, the evaluation or the award of a contract subsequent to a solicitation.

Section 2.1 Time for Filing Protests

Protests shall be filed with the Materials Manager within seven (7) days after the aggrieved person or entity knows or should have known the facts and circumstances upon which the protest is based. However, in no event, shall the protest be filed later than seven (7) days after issuance of a notice of intent to award. Untimely protests will not be considered. [Glendale code section 2-145(1) (j)]

Section 2.2 Filing of a Protest

A. A protest shall be submitted, in writing, to the Materials Manager and shall include the following information:

1. The name, address, telephone number and e-mail address of the protestant;
2. The signature of the protestant or its representative;
3. Identification of the solicitation and contract number;
4. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents;
5. The form of relief requested.
6. Protests must be submitted to:

Materials Manager
c /o City of Glendale – Materials Management Division
5850 West Glendale Avenue, Suite 317
Glendale, Arizona 85301



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- B. Protests must be in the possession of the Materials Management Division no later than 5:00 p.m. on the due date. Materials Management is located on the 3rd Floor of the Glendale Municipal Office Complex (City Hall) behind the Engineering Department. Protests are accepted between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except for holidays. All protests will be time stamped at the Engineering Department's front counter, which stamp will serve as the time of possession of the Materials Management Division.

Section 2.3 *Processing of a Protest*

- A. The Materials Manager will give notice of the protest to the successful vendor if a notice of intent to award has been issued, or if no notice of intent has been issued, to all actual or prospective bidders. For purposes of this section, "prospective bidder" means a person or entity that, at the time the protest is received by Materials Management, has completed a proposer registration form on the Materials Management website for the solicitation under protest.
- B. The Materials Manager will review the formal protest and issue a written determination within fourteen (14) business days of receiving the formal protest. The Materials Manager may also give notice of the determination to any other persons involved in the solicitation whose interests may be affected by the ruling.
- C. If the Materials Manager fails to issue a decision within the time limits set forth in subsection (B) of this section, the protestant may proceed as if the Materials Manager had issued an adverse decision.

Section 2.4 *Stay of Procurements During the Protest*

In the event of a timely protest, the City may proceed further with the solicitation or with the award of the contract unless the Materials Manager makes a written determination that it is in the best interest of the city to stay the procurement.

Section 2.5 *Confidential Information*

- A. Material submitted by a protester shall not be withheld from an interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to code provisions for confidential material.
- B. If the protester believes the protest contains material that should be withheld, a statement advising the Materials Manager of this fact shall accompany the protest submission.



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Section 2.6 Remedies

- A. If the Materials Manager sustains the protest in whole or part and determines that a solicitation or proposed contract award does not comply with Glendale's Purchasing Code or other applicable laws and regulations, the Materials Manager shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the Materials Manager shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, costs to the City, the urgency of the procurement and the impact of the relief.
- C. An appropriate remedy may include one or more of the following:
 - 1. Reissue the solicitation;
 - 2. Issue a new solicitation;
 - 3. Award a contract consistent with Glendale's Purchasing Code and other applicable laws and regulations; or
 - 4. Such other relief as is determined necessary to ensure compliance with procurement laws and regulations.

Section 2.7 Dismissal Before Hearing

The Materials Manager may dismiss a protest, upon a written determination, if:

- A. The protest does not state a valid basis for protest; or
- B. The protest is untimely pursuant to Section 2.1.

ARTICLE 3 HEARINGS

Section 3.1 Request for Hearing

- A. If a formal protest is not resolved by the protestant and the Materials Manager, the protestant may request a hearing ("Hearing Request"). The Hearing Request shall be in writing and filed with the Materials Manager no later than 7 business days after the written determination by the Materials Manager pursuant to Section 2.3(B).
- B. The Hearing Request shall be submitted to:
 - Materials Manager
 - c/o City of Glendale – Materials Management Division
 - 5850 West Glendale Avenue, Suite 317
 - Glendale, Arizona 85301



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- C. Hearing Requests must be in the possession of the Materials Management Division no later than 5:00 p.m. on the due date. Materials Management is located on the 3rd Floor of the Glendale Municipal Office Complex (City Hall) behind the Engineering Department. Hearing Requests are accepted between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except for holidays. All Hearing Requests will be time stamped at the Engineering Department's front counter, which stamp will serve as the time of possession of the Materials Management Division.
- D. The hearing will be conducted by the Financial Services Executive Director or designee ("Hearing Officer") and shall be held within sixty (60) days after the Hearing Request is received by the Materials Manager, unless the parties agree otherwise.

Section 3.2 *Rights and Responsibilities*

- A. Parties may be represented by legal counsel at the hearing before the Hearing Officer. A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross examine witnesses, subject to the determination of the Hearing Officer pursuant to Section 3.4. Each party shall bear its own hearing expenses.
- B. At least 10 days prior to the hearing, or as otherwise agreed by the parties, each party shall provide to the other party all documents, exhibits, and other evidence it intends to present at the hearing and a list of witnesses intended to testify at the hearing. A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. The Hearing Officer shall have no authority to issue subpoenas for the production of evidence or the appearance of witnesses.
- D. Once a hearing is requested, the procurement shall not proceed any further, nor shall the vendor awarded the contract perform any work under the new contract, until after the completion of the hearing procedure and after the final decision is rendered.

Section 3.3 *Ex Parte Communications*

- A. A party shall not communicate, either directly or indirectly, with the Hearing Officer about any substantive issue in a pending matter unless:
 - 1. All parties are present;
 - 2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
 - 3. It is in writing with copies to all parties.
- B. No party shall file a document or send a letter to a Hearing Officer without sending a copy to the other party(ies). All parties shall make sure that all other parties are notified and given a copy of any motion or letter sent to a Hearing Officer.



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Section 3.4 *Conduct of Hearing*

- A. The Hearing Officer will have a recording made of the hearing at the expense of the City. To maintain the objectivity of the hearing record, the Hearing Officer shall control the process of making the recording during the hearing. If the protestant or its representatives request a transcript of the proceeding, they shall pay the costs of creating the transcript.
- B. The Hearing Officer shall begin the hearing by stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. The Hearing Officer shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- E. The hearing shall be continuous until the Hearing Officer closes the record. Hearings shall be conducted informally as to the order of proceeding and the presentation of evidence, as determined by the Hearing Officer. The Arizona Rules of Evidence shall not apply. A party shall conduct direct and cross examination of witnesses on the order and manner determined by the Hearing Officer to expedite and ensure a fair hearing. The Hearing Officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination.
- F. The Arizona Rules of Evidence shall not apply. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight and authenticity. Summary records may be admitted subject to satisfactory proof of the reliability of the summaries. The Hearing Officer shall mark exhibits and admit them into the record as evidence as the parties present them.
- G. The decision by the Hearing Officer shall be final. The decision shall be sent to all parties by personal service or certified mail, return receipt requested, within 20 days after the conclusion of the hearing.

Section 3.5 *Failure of Party to Appear for Hearing*

If a party fails to appear at a hearing, the Hearing Officer may proceed with the presentation of the evidence of the party who is present.

Section 3.6 *Witnesses*

All witnesses at the hearing shall testify under oath or affirmation.



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Section 3.7 *Burden of Persuasion*

In all cases, the decision of the Hearing Officer shall be made upon clear and convincing evidence. Unless otherwise provided by law:

1. The party asserting a claim, right, or entitlement has the burden of persuasion;
2. A party asserting an affirmative defense has the burden of establishing the affirmative defense.

Section 3.8 *Disruptions*

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Hearing Officer may order the disruptive person to leave or be removed.

Section 3.9 *Hearing Record*

- A. The City Clerk shall maintain the official record of a matter.
- B. Any party requesting a copy of the record or any portion of the record shall make a request to the City Clerk and shall pay the costs of creating or duplicating the record.
- C. Exhibits shall be released:
 1. Upon the order of a court of competent jurisdiction ; or
 2. Upon written request of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.